1: Swanton E-5 (1911-12)1928 NN11 Creek NN11

684 that this was "according to one of their old laws against crimes of that kind." [67]

In another place Adair speaks of the nonobservance of the separation of a woman during her menstrual periods as a crime on a par with murder and adultery. "Should any of the Indian women violate this law of purity," he says, "they would be censured, and suffer for any sudden sickness, or death that might happen among the people." [68]

685 Punishments similar to those described above were resorted to in cases of theft, which anciently do not appear to have been common within the tribe. Hodgson, relying on an Indian trader of 15 years' experience, says of this:

"Stealing is punished, for the first offence, by whipping; for the second, by the loss of the ears; for the third, by death—the amount stolen being disregarded. My host remembers when there was no law against stealing; the crime itself being almost unknown—when the Indians would go hunting, or 'frolicking,' for one or two days, leaving their clothes on the bushes opposite their wigwams, in a populous neighborhood, or their silver trinkets and ornaments hanging in their open huts. Confidence and generosity were then their characteristic virtues. A desire of gain, caught from the whites, has chilled their liberality; and abused credulity has taught them suspicion and deceit." [69]

[177] It is to be feared that this is in part another case of "the good old days" which do not appear as good on close examination, but, for economic reasons, it is certain that stealing was not one of those sins characteristic of the southeastern Indians before white contact.

As to the penalties inflicted for theft, Hodgson's informant is substantially confirmed by Gregg. "Most inferior crimes," he says, "are punished by whipping; for the first offence of stealing, fifty lashes; for the second, a hundred and ears cropped," and he has already stated that death was the penalty for the third.[70]

Swan says that McGillivray introduced the law that "if an Indian steals a horse, he is liable . . . to return him, or another of equal value, and pay a fine of thirty chalks, or fifteen dollars; if he is unable to do so, he may be tied and whipped thirty lashes by the injured party. But," he adds, "as in other cases, the infliction of punishment depends, at last, on the superior force of the injured clan." [71]

•687 Failure to attend the busk was penalized by the imposition of fines or confiscation of property, and similar punishments were resorted to for other derelictions in duty to the community. Thus,

[67] Adair, Hist. Am. Inds., p. 22.
[68] See p. 359.
[69] Hodgson, Journey through N. Am., pp. 267–268.
[70] Gregg, Commerce of the Prairies, in Early Western Travels, vol. 20, pp. 315, 316.
[71] Swan in Schoolcraft, Ind. Tribes, vol. [illegible] p. 281.

1: Swanton E-5 (1911-12)1928 NN11 Creek NN11

the Tukabahchee chief said to Hitchcock: "When we order out the people to make a public fence, if they don't turn out, we send and take away their gun, or horse, or something else to punish them."[73]

Adair tells us that neglect of the regular morning plunge into running water was deemed a heinous crime and was punished by dry scratching.[73a]

Mention has been made above of the device resorted to by McGillivray in order to bring recalcitrant towns to order.

"When the inhabitants of any particular town are notorious for horse-stealing, or have acted otherwise unadvisedly, the chief has the entire power of punishing them collectively by removing the white man from among them, and depriving them of trade. This at once humbles them most effectually; for they conceive the privilege of having a good white trader in their town, to be inestimable."[73]

After the removal of the Indians to Oklahoma I am told that the following was the usual procedure in cases of theft. A council of the people or clans in the neighborhood was held and the matter was reported to the chief of the Creek Nation who then sent light-horsemen after the culprits, although sometimes he left the apprehension of them to the people living in the neighborhood. When these had been brought to trial and convicted they were usually lashed, and the lashing was by no means a light matter, according to those who have observed it, the blows raising huge welts on the flesh and death not infrequently ensuing. Debts of licensed traders were sometimes brought before the national council for adjudication.[74]

Escaped murderers and adulterers, and those who had committed lesser offenses and had withdrawn from their people to avoid the ridicule and contempt of their fellow townsmen, formed a class from which, says Bartram, generally came the ruffians who committed depredations and murders on the frontiers.[75] The foundation of new towns may sometimes be traced to them, as indeed is frankly admitted by members of those towns themselves. It is said that the town of Wiwohka had such an origin, and it is also claimed for others like Hilibi on less satisfactory grounds. In later times many such people swelled the population of the Florida Seminole.

Adair is the only writer to say anything about oaths used in adjuring a witness to give true evidence, and in this connection he does not mention the Creeks, only the Cherokee, Chickasaw, and Choctaw. The Chickasaw and Choctaw oath he gives as *Chiklooska ke-e-u Chua*,[76] which he interprets "Do not you lie? Do you not, of a certain

[73] Hitchcock, Ms. notes.
[73a] Adair, Hist. Am. Inds., p 130; see p. 398.
[73] Swan in Schoolcraft, Ind. Tribes, vol. v, pp. 281-282.
[74] Schoolcraft, Ind. Tribes, vol. I, p. 277.
[75] Bartram, Travels, p. 513.
[76] *Lushke* is a Chickasaw word meaning "to lie"; *chiklushke* signifies "you do not lie"; *ke-e-u* (or *keyu*) is the negative. The form used here is a strengthened one.